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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/787,365	05/04/2001	Vincent De La forcade	2365-27	8183

7590 08/19/2003  
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EXAMINER

NGO, LIEN M

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 08/19/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/787,365

Applicant(s)

DE LA FORCADE, VINCENT

Examiner

LIEN TM NGO

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 6-13-03.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 25-46 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 25-43, 45 and 46 is/are rejected.
- 7) ☒ Claim(s) 44 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 6/13/03 has been entered.

### ***Claim Objections***

2. Claims 41 and 42 are objected to because of the following informalities: In claims 41 and 42, "appreciably" should be --approximately--. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 26, 28, 30, 32, 34, 36, 38, 45 and 46 are rejected under 35 U.S.C. 102(b) as being anticipated by Mennesson (Fr. 2,607,786).

In regard to claims 26, 28 Mennesson discloses, in figs. 1 and 2, a device is capable of storing liquid comprising a container and a removable cap 2. The container comprises a nozzle having an outer portion containing a gripping

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portion (screw thread). The cap comprises a sidewall with an inner surface containing gripping portion to engage the nozzle gripping portion. The cap further comprising a containment element 6 which is capable to retain liquid in the container axially distant from the container orifice.

In regard to claims 30, 32, 34, 36 and 38, the cap further comprises a communication element 3 having a duct capable placing inside the container in communication with a zone delimited by the cap and in communication with the outside when the cap is partially gripping the nozzle (see fig. 2). The communication element comprises 4 tabs separated by slots 5.

In regard to claim 45 and 46, the cap comprise a stopper element 3 and a pressure equalizing element 5 which equalizes pressure inside the container and outside the container when the cap is partially gripping the nozzle (see fig. 2).

5. Claims 25, 27, 29, 31 and 43 are rejected under 35 U.S.C. 102(b) as being anticipated by Baugh (3,592,349).

In regard to claims 25, 27 and 43, Baugh discloses, in figs. 1-3, a device is capable of storing liquid comprising a container 10 and a removable cap 17.

The container comprises a nozzle 14 having an outer portion containing a gripping portion 14. The cap comprises a sidewall with an inner surface containing gripping portion 26 to engage the nozzle gripping portion. The cap comprise a stopper element 21 and a pressure equalizing element 19 which equalizes pressure inside the container and outside the container when the cap is partially gripping the nozzle (see fig. 2). The cap further comprising a

containment element 22 which is capable to retain liquid in the container axially distant from the container orifice.

In regard to claims 29 and 31, the cap further comprises a communication element having a duct (the passage between the stopper element 21) capable placing inside the container in communication with a zone delimited by the cap and in communication with the outside when the cap is partially gripping the nozzle (see fig. 2).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 40 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mennesson. Although Mennesson is silent as to disclose a length of the tabs either approximately equal or longer to the nozzle length, it would have been an obvious matter of design choice to make the length of the tabs in Mennesson device as claimed, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955).

8. Claims 33, 35, 37, 39 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baugh in view of Mennesson.

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In regard to claim 33, 35 and 37, Baugh does not disclose the stopper element comprising tabs and slots.

Mennesson teaches a stopper element comprising tabs and slots.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the Baugh stopper element with tabs and slots, as taught by Mennesson, in order to provide a flexibility for the end of the stopper when insert to the container.

9. In regard to claim 39 and 41, Baugh in view of Mennesson does not disclose a length of the tabs either approximately equal or longer to the nozzle length, it would have been an obvious matter of design choice to make the length of the tabs in Baugh in view of Mennesson device as claimed, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955).

***Allowable Subject Matter***

10. Claim 44 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

11. The following is a statement of reasons for the indication of allowable subject matter: claim 44 would be allowable because the prior art of the record, either alone or combination, does not disclose a liquid storage device comprising a container having a nozzle and a gripping portion; and a cap having gripping portion, a stopper element, a

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pressure equalizing element, and a liquid containment element. The pressure equalizing element is adapted to retain a portion of liquid in the nozzle by capillary action when the cap is partially gripping the nozzle. The cap further comprises a tube with a length longer than that of the cap, arranged inside the cap and opening at one end near the opening of the nozzle when the cap is engaged to the nozzle, the tube extending at the other end into the inside of the container.

***Response to Arguments***

12. Applicant's arguments with respect to claims 25-43, 45 and 46 have been considered but they are persuasive as pointed out in the rejections above.

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Alter and Victor et al. teach caps having gripping portions and stopper elements.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LIEN TM NGO whose telephone number is 703-305-0294. The examiner can normally be reached on Monday through Friday from 8:30 AM -6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LEE YOUNG can be reached on 703-308-2572. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

Lien Ngo

August 15, 2003

A handwritten signature in black ink, appearing to be 'Lien Ngo', with a stylized, wavy line extending from the end.